

**RECEIVED IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

2005 SEP 14 P 3:53

DEPT. OF JUSTICE  
U.S. DISTRICT COURT  
MIDDLE DISTRICT ALA.

**T. RAWDON BEATY,**

**Plaintiff,**

**v.**

**MERCK & CO., INC., a foreign  
Corporation, et al.,**

**Defendants.**

**Case No.:** 2:05cv880-W

**Removed from the Circuit  
Court of Barbour County,  
Alabama**

**MOTION TO DISMISS**

Without waiving any other defense he may have to this lawsuit, Defendant Tim Griswald moves to dismiss the Plaintiff's Complaint, under Rule 12(b)(6) of the Federal Rules of Civil Procedure, for failure to state a claim upon which relief can be granted. In support of this motion, Griswald states that he has been fraudulently joined to this action, and incorporates the legal arguments, citations, and exhibits in Merck & Co., Inc.'s Notice of Removal.



ROBERT C. "MIKE" BROCK (ASB-5280-B61R)  
BENJAMIN C. WILSON (ASB-1649-I54B)  
R. AUSTIN HUFFAKER, JR. (ASB-3422-F55R)

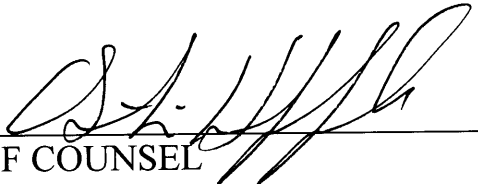
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**CERTIFICATE OF SERVICE**

I hereby certify that on September 14th, 2005, I served the following counsel of record with a copy of the foregoing via United States Mail, postage prepaid and properly addressed:

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OF COUNSEL